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March 13, 2000

**VIA HAND DELIVERY**

Magalie Roman Salas, Esq.  
Secretary  
Federal Communications Commission  
The Portals  
445 12th Street, S.W.  
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RECEIVED  
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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

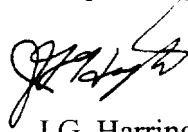
Re: CC Docket No. 98-184 – Transfer of Control of GTE Corporation  
Notice of Written Ex Parte Communication

Dear Ms. Salas:

I am writing to inform you that on Friday, March 10, 2000, the undersigned, on behalf of Cox Communications, Inc., sent the attached letter to Dorothy Attwood of Chairman Kennard's office, Jordan Goldstein of Commissioner Ness's office, Rebecca Beynon of Commissioner Furchtgott-Roth's office, Kyle Dixon of Commissioner Powell's office and Sarah Whitesell of Commissioner Tristani's office.

Pursuant to Section 1.1206(b) of the Commission's rules, an original and one copy of this letter are being submitted to the Secretary's office for the above-captioned docket by the close of business on the day following the submission of that written ex parte presentation and copies of this letter are being provided to the recipients of the presentation. Should there be any questions regarding this filing, please contact the undersigned.

Respectfully submitted,



J.G. Harrington  
Counsel for Cox Communications, Inc.

JGH/vll

Attachment

cc: Dorothy Attwood, Esq.  
Jordan Goldstein, Esq.  
Rebecca Beynon, Esq.  
Kyle Dixon, Esq.  
Sarah Whitesell, Esq.

No. of Copies rec'd 01  
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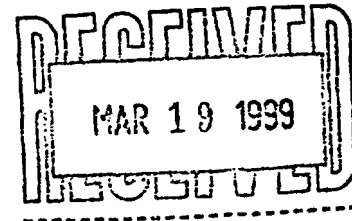
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**HAND-DELIVERED**

March 18, 1999

Mr. Joel H. Peck, Clerk  
State Corporation Commission  
Document Control Center - First Floor  
1300 East Main Street  
Richmond, VA 23219



***Re:   Petition of Cox Virginia Telcom, Inc., v. GTE South for enforcement of  
interconnection agreement for reciprocal compensation for termination  
of local calls to Internet Service Providers (PUC99\_\_)***

Dear Mr. Peck:

Enclosed please find an original and fifteen (15) copies of the *Petition of Cox Virginia Telcom, Inc., v. GTE South, Inc.*, which we ask that you file.

I enclose an additional copy of the *Petition*. Please have it file stamped and returned to our messenger. Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Louis R. Monacell".

Louis R. Monacell

cc (w/encl.): Ms. Jill Butler  
Mr. Stephen C. Spencer  
Ms. Anne Lowery  
Richard D. Gary, Esq.  
Division of Communications, SCC  
Office of General Counsel, SCC

#474179.1

**COMMONWEALTH OF VIRGINIA**  
**STATE CORPORATION COMMISSION**

**Petition of**

**COX VIRGINIA TELCOM, INC.,**

**v.**

**Case No. PUC99 \_\_\_\_**

**GTE SOUTH, INC.,**

**For enforcement of interconnection  
agreement for reciprocal compensation for  
the termination of local calls to  
Internet Service Providers.**

**PETITION OF COX VIRGINIA TELCOM, INC.  
FOR ENFORCEMENT OF INTERCONNECTION  
AGREEMENT FOR  
RECIPROCAL COMPENSATION FOR THE TERMINATION  
OF LOCAL CALLS TO INTERNET SERVICE PROVIDERS**

**A.**

**INTRODUCTION**

Cox Virginia Telcom, Inc. ("Cox"), by counsel, hereby petitions the Commission for an order directed against GTE South, Inc., ("GTE") declaring that local calls to internet service providers ("ISPs") constitute local traffic as that term was used and intended by Cox and GTE at the time they executed their interconnection agreement ("Agreement"), respectively, on March 25 and March 27, 1997. As such, the Agreement provides for one party on whose system such calls originate to pay compensation to the other for completion of such calls. In addition, Cox

asks the Commission to enforce GTE's obligations under the Agreement to make payments to Cox related to its completion of such calls to ISPs.

The Agreement, in all of its provisions material to the issues in dispute, was the result of negotiation between the parties. Each was free at the time of the negotiations and prior to execution to take the position that completion of calls to ISPs should not be subject to a duty under the Agreement to pay reciprocal compensation.

The parties during their negotiations discussed whether there should be reciprocal compensation or "bill and keep" for one party's completion of calls originating on the other's system. They agreed, as the Agreement reflects, to use "bill and keep" with no compensation for completion of calls until the local traffic imbalance exceeded plus or minus 10%. At that point, reciprocal compensation would be paid for completion of all local traffic.

Neither party, however, during the negotiations and prior to execution of the Agreement took the position that completion of calls to ISPs should be excluded from the reciprocal compensation obligation in the Agreement. Rather, the facts show that Cox and GTE both understood and intended at the time of entering the Agreement that completion of calls to ISPs would be treated as completion of local calls for the purposes of their Agreement.

It was over a year after execution of the Agreement that GTE announced in a letter its contrary position that completion of calls to ISPs was not intended within the definition of local traffic. GTE's unilateral change of position, after execution of the Agreement, does not free GTE of its obligation to pay compensation under the Agreement. Rather, the intent of the parties at the time of execution of the Agreement continues to be binding upon GTE.

The next section sets forth the facts supporting this petition.

**B.**

**FACTS**

**The Parties**

1. The address of Cox Virginia Telcom, Inc., (formerly known as Cox Fibernet Commercial Services, Inc.) is 4585 Village Avenue, Norfolk, Virginia 23502.

2. The address of GTE South, Inc. is 600 Hidden Ridge, Irving, Texas 75038.

**The Agreement**

3. Cox initiated negotiation with GTE for interconnection by letter dated March 21, 1996.

4. Those negotiations resolved most non-price issues and terms.

5. Included among the issues resolved through negotiations was the issue of "bill and keep" versus reciprocal compensation. With bill and keep, there is no payment owed to the party that completes a call when the call originates on the other's system. With reciprocal compensation, the party on whose system a call originates owes a payment to the other party that completes the call.

6. Cox and GTE both understood during their negotiations and prior to execution of the Agreement that completion of calls to ISPs was completion of local traffic as they were using that term in their negotiations and Agreement.

7. Completion of calls to ISPs was so widely known and accepted in the telecommunications industry at that time as completion of local traffic that neither party saw a need to address ISP traffic explicitly in the Agreement.

8. Cox and GTE both understood during their negotiations and prior to execution of the Agreement that there would be more incoming calls to an ISP than outgoing calls because of the nature of the ISP's business.

9. Cox and GTE agreed that bill and keep would be used for completion of calls on the other's system until local traffic imbalance exceeded plus or minus 10%, after which reciprocal compensation would be owed.

10. Thus, Section V.C.1., p. 17, of the Agreement provides that, "for traffic from Cox and terminated to GTE end offices or tandems and for traffic originated from GTE and terminated to Cox end offices or tandems," the compensation rates in Exhibit B ("Detailed Schedule of Itemized Charges") to the Agreement apply. Exhibit B, Section A. 1. a. provides, with respect to "Call Termination - Local Calls," for "[n]o billing for local calls terminated by the other Party" for local traffic imbalance within plus or minus 10%; and for reciprocal compensation to be paid at the stated rates in Exhibit B for local traffic imbalance exceeding plus or minus 10%.

11. Further, "Local Exchange Traffic" is defined simply by page 7 of the Agreement to mean "any traffic that is defined by Local Call Area." The latter term is defined on page 6 of the Agreement to mean "the Extended Area Service (EAS) and Extended Local Service (ELS) calling area for each exchange as defined in GTE's local tariff at the date of the agreement. For purposes of this agreement, Extended Area Calling (EAC) and optional Local Calling Plans are not considered local."

12. Because the parties were unable through their negotiations to resolve certain pricing and other terms (not material to their present disagreement), they sought arbitration of those unresolved issues and terms from the Commission. The issues arbitrated did not include

whether ISP traffic is local traffic or whether the parties should use bill and keep or reciprocal compensation. Rather, the parties intended that they had resolved those issues through their negotiations.

13. On December 11, 1996, the Commission pursuant to § 252 of the Telecommunications Act of 1996, decided the arbitration of unresolved issues from the interconnection negotiations between GTE and Cox.<sup>1</sup>

14. Following that decision, Cox and GTE entered into their Agreement under §§ 251 and 252 of the Act, which they executed, respectively, on March 25 and March 27, 1997.

15. The Commission conditionally approved the Agreement in May 1997.<sup>2</sup>

16. During the negotiations and prior to execution of the Agreement, GTE at no time discussed excluding or otherwise sought to exclude ISP traffic from the definition of local traffic for purposes of reciprocal compensation.

17. At no time during the Commission's proceedings for arbitration and approval of the Agreement did GTE discuss excluding or otherwise seek to exclude ISP traffic from the definition of local traffic for purposes of reciprocal compensation.

#### **GTE's Conduct Related to Intent**

18. It was only many months after execution of the Agreement and after Cox and other competitive local exchange carriers ("CLEC") became successful in obtaining ISPs as local telephone service customers that GTE took the contrary position that ISP traffic is not local traffic for which reciprocal compensation is due.

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<sup>1</sup> Order, Case No. PUC960118 ("Arbitration Decision").

<sup>2</sup> Order, Case No. PUC960118 (May 1, 1997); Order, Case No. PUC960118 (May 30, 1997).

19. GTE is seeking to change the deal negotiated by the parties because it does not like the outcome of the Agreement as it relates to competition for the business of ISPs. Because Cox and other CLECs have generally been more successful in obtaining ISPs as customers, GTE seeks to change the intent of the Agreement, which was to provide for reciprocal compensation for completion of calls to ISPs.

20. In many other respects, GTE both prior to and after execution of the Agreement has treated traffic to ISPs as local traffic.

21. For example, GTE bills and otherwise treats calls from its customers to ISPs that are also its customers as local traffic.

22. Furthermore, calls from GTE's customers to ISPs use the same traditional seven digit, local-service dialing sequence and the same Local Calling Area, as defined in the Agreement.

#### **Trade Usage at the Time of Negotiation and Execution of the Agreement**

23. The understanding and prevailing trade usage in the telecommunications industry at the time of negotiation and execution of the Agreement were that the completion of calls to ISPs was local traffic.

24. At the time of negotiation and execution of the Agreement, it was commonly understood in the telecommunications industry that there were two principal and alternative methods for handling termination of local traffic that originated on one local exchange carrier and was terminated by another local exchange carrier. One method is bill and keep, in other words, neither carrier would pay compensation to the carrier that completed the call. The other is



reciprocal compensation, whereby the originating carrier would compensate the carrier that completed the call.

25. At the time of negotiation and execution of the Agreement, it was commonly understood in the telecommunications industry that completion of calls to ISP was completion of local traffic for which reciprocal compensation would be due if an interconnection agreement provided for reciprocal compensation for completion of all local traffic.

### **GTE's Breach**

26. Cox and GTE began to exchange traffic in accordance with the Agreement in September 1997.

27. In December 1997, Cox informed GTE that traffic was out of balance by more than 10%.

28. At a February 23, 1998, meeting among representatives of Cox and GTE, Cox and GTE recognized, based on the records exchanged, that traffic was out of balance by greater than 10%, and that, accordingly, it was appropriate for the two companies to begin billing each other for local interconnection traffic. GTE asserted that, in order to do so, it had to convert existing two-way trunks to one-way trunks. While conversion of GTE's trunks was discussed at the February 23, 1998 meeting, trunk conversion was unrelated to whether billing for local interconnection traffic was appropriate. To the contrary, compensation due Cox under the Agreement for termination of local traffic when traffic is out of balance is not conditioned upon GTE's conversion from one-way to two-way trunks. Rather, Exhibit B, Section A. 1. a. of the Agreement provides for the payment of reciprocal compensation whenever there is a "local traffic imbalance" exceeding plus-or-minus 10%.

29. For Cox and GTE to have agreed at the February 23, 1998, meeting to impose another condition – trunk conversion – on such a payment would have required a written amendment to the Agreement that the parties would have been obliged to submit to the Commission for its approval. See May 30, 1997, *Order*, Case No. PUC960118, pg. 4, Ordering Paragraph (1) (“[a]ny future negotiations that result in a different or new arrangement for interconnection, services, or network elements under §251 of the Act shall be submitted to the Commission for approval under §252(e) of the Act.” Cox never agreed to any such amendment, and no such amendment has been executed.

30. On August 17, 1998, GTE wrote Cox that it disputed Cox’s bill, dated August 15, 1998, totaling \$406,088.36, and was withholding payment. GTE asserted there was an error in the bill and that parties had agreed at a February 23, 1998, meeting to continue the Bill and Keep arrangement until one-way trunks had been installed on August 14, 1998.

31. Cox wrote GTE on September 3, 1998, in response to its August 17, 1998, letter. Cox explained why GTE’s withholding of payment was improper. Those reasons include the reasons set forth in the next several paragraphs.

32. Although GTE may dispute Cox’s assessment of billing charges, withholding of payment is strictly contrary to Section XIX.M.6. of the Agreement, which states:

6. Continuous Service. Each Party shall continue to provide services to the other Party during the pendency of any dispute resolution procedure, and GTE shall continue to perform its obligation (including making payment) in accordance with this Agreement. (*Emphasis supplied.*)

33. Cox continued to send bills for reciprocal compensation to GTE in accordance with the Agreement. On October 16, 1998, GTE wrote Cox stating that GTE “is willing to agree

to an earlier reciprocal billing start date of April 1, 1998" and requested Cox "submit the local traffic Cox has terminated to GTE from April 1 through August 14, in Virginia."

34. On December 7, 1998, GTE wrote Cox that it disputes Cox's bill dated November 15, 1998, totaling \$583,888.40 and is withholding payment. This was a new dispute. GTE stated in that letter that "there is an error in your billing for the reciprocal termination of local traffic as provided for in our Interconnection Agreement. It appears that Cox Communication is billing GTE for more than local traffic as defined in that Agreement."

35. The Agreement provides that all billing disputes must be received within 30 days of the bill date or 20 days of the receipt of bill date, whichever is later. The Cox bill that is disputed is dated November 15, 1998. While GTE's letter disputing the bill was received December 10, 1998, which is within the time limit, GTE disputed the entire balance due (\$583,888.40), whereas GTE only has the right under the Agreement to dispute the current charges (\$53,430.83).

36. By waiting until after the deadline to provide notice of billing disputes, GTE has waived its right to dispute any part of the \$583,888.40, except for the \$53,430.83 in charges that were current as of the November 15, 1998, Cox bill.

37. GTE, furthermore, is in violation of the Agreement by withholding any part of the \$583,888.40 bill amount, including the \$53,430.83 in current charges, because the Agreement provides that GTE must continue to pay its bills even though it has disputed the bill amount.

38. On December 11, 1998, representatives from Cox and GTE met via conference call and agreed, in order to resolve the earlier dispute about when billing begins, to begin billing for reciprocal compensation on March 6, 1998.

39. On December 16, 1998, Cox wrote GTE confirming that Cox agrees that reciprocal compensation should begin on March 6, 1998, the date on which both Parties agreed that one-way trunks would be installed.

40. GTE has not paid for any calls between Cox and GTE, nor has it paid for circuit termination between Cox and GTE. Cox billed GTE for such amounts starting in October 1997. In light of GTE's failure to pay Cox any of the outstanding sums due, GTE is now subject to the late payment penalty provided for by the Agreement of 1.5% applied to all outstanding balances of more than 30 days. See Section XIX, General Provisions V.G.2, pg. 36. of the Agreement.

41. On February 3, 1999, counsel for Cox made a written payment demand in a letter to GTE's counsel.

42. Because of GTE's failure to pay, or to make timely objections to, Cox's invoices to GTE, GTE owes not only the invoice amount of \$469,086.39, but also late payment charges.

43. GTE has waived its right to dispute Cox's outstanding invoices because GTE has failed to adhere to and comply with the provisions of the Agreement regarding disputed billings. Specifically, Section XIX.G. ("Billing and Payment"), page 36 of the Agreement required GTE, if it disputes a Cox billing statement, to notify Cox in writing regarding the nature and basis of the dispute within 30 calendar days from the bill date, or 20 calendar days from the receipt of the bill, whichever is later, or the dispute shall be waived.

44. GTE failed to notify Cox pursuant to Section XIX.G.1., pg. 36, "regarding the nature and basis of the dispute" concerning the invoices until its December 7, 1998, letter. That letter referred only to Cox's invoice dated November 15, 1998. In the December 7, 1998, letter, GTE stated for the first time that:

It appears that Cox Communication[s] is billing GTE for more than "Local Traffic" as defined in that agreement.

Based upon this appearance, GTE disputes your bill 71899004D3, dated November 15, 1998 totaling \$583,888.40 and is withholding payment.

45. The December 7, 1998, letter, was GTE's first notice to Cox that set forth, as required by the Agreement, the nature and basis of its dispute of the underlying invoices. Thus, GTE failed under the Agreement to object to any of the previous invoices between November 15, 1997, and October 15, 1998.

46. The amount of the November 15, 1998, invoice is \$53,432.83. The \$583,888.40 amount referred to as in dispute by GTE represents the cumulative total of Cox's billings as of November 15, 1998. GTE and Cox later separately agreed to adjust the cumulative total due from the \$583,888.40 to \$469,086.39. In the discussions and negotiations culminating in this separate agreement, GTE at no time either raised or objected to the cumulative, outstanding total based on a theory regarding the nature of ISP traffic. Thus, GTE has waived its right to dispute the total amount.

The next section sets forth conclusions with regard to the principal issue in dispute, *i.e.*, whether the parties intended reciprocal compensation to apply to ISP-bound traffic.

C.

CONCLUSIONS

1. Each party was free during the negotiations and prior to execution of the Agreement to take the position that completion of calls to ISPs should not be subject to a duty under the Agreement to pay reciprocal compensation. Thus, the principal issue for the Commission's determination in this proceeding is whether the parties intended reciprocal compensation to apply to ISP traffic.
2. The intent that is controlling is the intent of the parties during the negotiations and prior to execution of the Agreement.
3. At the time of the negotiation and execution of the Agreement, both parties understood that termination of calls to ISPs was considered termination of local traffic. That was so well and widely known and accepted in the telecommunications industry at that time that neither party saw a need to mention ISP traffic explicitly in the Agreement.
4. If GTE had wanted to exclude ISP traffic from the obligation to pay reciprocal compensation, it could have sought during the negotiations and arbitration a simply worded exclusion of ISP traffic from the definition of local traffic. It did not.
5. The parties' behavior during the negotiations, arbitration, and execution of the Agreement, and for a number of months thereafter was consistent with and indicated both parties' intention that ISP traffic was within the definition of local traffic. It was only a number of months later, after it became apparent that Cox and other CLECs had been more successful than GTE in competing for ISPs as customers, that GTE announced its contrary position that termination of calls to ISPs was not within the definition of local traffic.

6. GTE's unilateral change of position, after execution and the Commission's approval of the Agreement, does not free GTE of its obligation to pay compensation under the Agreement. Rather, the intent of the parties at the time of execution of the Agreement continues to be binding upon GTE.

7. This Commission has previously ruled in a similar dispute between Cox and Bell Atlantic-Virginia, Inc. In language substantially similar to the Cox - GTE Agreement, the Cox - Bell Atlantic Agreement required the parties to "compensate each other for the transport and termination of Local Traffic in an equal and symmetrical manner" at the rates provided for in that agreement. Bell Atlantic espoused the same position after it had executed its agreement that GTE takes here, namely, that calls terminating at ISPs were not subject to reciprocal compensation. Cox filed an enforcement petition with the Commission in Case No. PUC970069. The Commission rejected Bell-Atlantic's position. It held at page 2 of its Final Order as follows:

[T]he Commission finds that calls to ISP's as described in the Cox petition constitute local traffic under the terms of the Agreement between Cox and BA-VA and that the companies are entitled to reciprocal compensation for the termination of this type of call.

The Commission recognized that the terms and conditions of the agreement controlled and that such are to reflect the parties' intent at the time of the negotiation.

8. The recent decision of the Federal Communications Commission supports a similar conclusion by the Commission in the instant case. On February 25, 1999, the FCC issued a declaratory ruling on the issue of whether a local exchange carrier is entitled to receive reciprocal compensation for traffic that it delivers to an information service provider, particularly an internet service provider. In the Matter of Interpretation of the Local Competition Provisions,

CC Docket No. 96-98 and Inter-Carrier Compensation for ISP-Bound Traffic, CC Docket No. 99-68, Declaratory Ruling (Feb. 25, 1999) ("*FCC Order 99-38*"). The FCC concludes that traffic to ISPs does not terminate at the ISPs, but continues to an ultimate destination on the internet, often in another state (*FCC Order*, 99-38 at ¶12), and that such traffic to ISPs is "jurisdictionally mixed," with at least a substantial portion being interstate. (*FCC Order 99-38* at ¶19, 20.)

9. Nonetheless, the FCC was clear to emphasize that parties may agree and should be bound by their agreements to treat ISP - bound traffic as subject to reciprocal compensation. *FCC Order 98-38* at ¶22. It held:

In the absence, to date, of a federal rule regarding the appropriate inter-carrier compensation for this traffic, we therefore conclude that parties should be bound by their existing interconnection agreements, as interpreted by state commissions.

Id. Further, the FCC said that state commissions, when construing the parties' agreements, "have the opportunity to consider all the relevant facts, including the negotiation of the agreements in the context of this Commission's longstanding policy of treating this traffic as local, and the conduct of the parties pursuant to those agreements." Id.

10. In the instant case, the Commission should consider all the relevant facts and conclude that Cox and GTE intended during their negotiations and at the time of execution of their Agreement that ISP-bound traffic should be treated as local traffic for purposes of applying reciprocal compensation.

The final section that follows outlines the relief sought in this petition.



D.

**RELIEF**

Cox Virginia Telcom, Inc., respectfully asks that the Commission enter an order:

- (1) declaring that local calls to ISPs constitute local traffic  
under the terms of the Agreement and that Cox and GTE  
South, Inc., are entitled pursuant to their Agreement to  
reciprocal compensation for the completion of such calls;  
and
- (2) enforcing GTE's obligations under the Agreement to make  
payments to Cox.

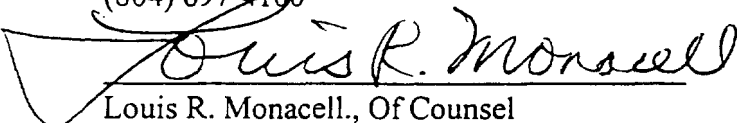
Respectfully submitted,

**COX VIRGINIA TELCOM, INC.**

By Counsel

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Louis R. Monacell, Of Counsel

March 18, 1999

## CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of March, 1999, a copy of the foregoing Petition was served, either by hand delivery or by first-class mail, postage prepaid, upon:

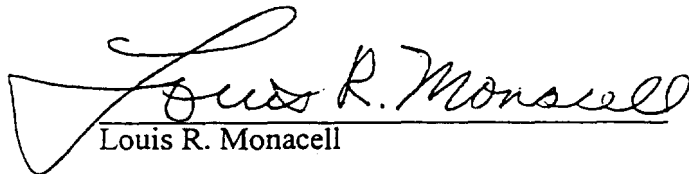
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Louis R. Monacell

March 18, 1999

#472388.1

**COMMONWEALTH OF VIRGINIA**  
**STATE CORPORATION COMMISSION**

**PETITION OF**

**COX VIRGINIA TELCOM, INC.**

**v.**

**CASE NO. PUC990046**

**GTE SOUTH, INC.**

**For enforcement of interconnection  
agreement for reciprocal compensation  
for the termination of local calls  
to Internet Service Providers**

**Reply of Cox Virginia Telcom, Inc. to Answer and  
Memorandum of Law of GTE South, Inc.**

Cox Virginia Telcom, Inc. ("Cox"), by counsel, pursuant to the Commission's Preliminary Order dated June 22, 1999, provides this reply to the Answer and Memorandum of Law by GTE South, Inc. ("GTE").

**I.     Introduction**

GTE is trying to rewrite the terms of its Interconnection Agreement with Cox some two years after the fact. It is trying to avoid paying reciprocal compensation for ISP-bound traffic, claiming first that this Commission does not have jurisdiction to hear this matter and then arguing that calls to ISPs were never considered local traffic. GTE's positions are based on a contorted reading of the a recent Declaratory Ruling<sup>1</sup> from the Federal Communications Commission ("FCC") and are contrary to the conclusions of the FCC, federal courts, state

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<sup>1</sup> Declaratory Ruling and Notice of Proposed Rulemaking, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic, CC Docket Nos. 96-98 and 99-68 (Released February 26, 1999) \_\_\_ F.C.C. R \_\_\_, (hereafter "Declaratory Ruling").

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March 10, 2000

***VIA HAND DELIVERY***

Dorothy Attwood, Esq.  
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Re: CC Docket No. 98-184 – Transfer of Control of GTE Corporation  
Written Ex Parte Communication

Ladies and Gentlemen:

I am writing on behalf of our client Cox Communications, Inc., as a follow-up to the meetings held yesterday between several of you and representatives of Cox concerning Bell Atlantic's and GTE's failure to pay reciprocal compensation due to Cox for termination of Internet-bound traffic in Virginia. During those meetings, Cox took no position on the merits of the merger. However, the Cox representatives requested that, if the Commission grants the pending applications to transfer control of GTE, the grant be conditioned on payment by Bell Atlantic and GTE of the compensation due to Cox and other CLECs under duly ratified interconnection agreements. I understand that one question that arose during these meetings was how such a condition would be worded. Cox has asked me to provide you with language for a condition that could be included in any order granting the transfer applications.

As discussed during the meetings, Cox views this simply as a matter of enforcing the valid terms of existing interconnection agreements between Cox and Bell Atlantic and GTE and does not seek to have the Commission adopt any new policies concerning reciprocal

compensation for Internet-bound traffic. The Commission already has held that interconnection agreements adopted prior to the Commission's *Reciprocal Compensation Order* are enforceable to the extent that they call for reciprocal compensation for Internet-bound traffic. In Cox's case, however, the Virginia State Corporation Commission has declined to enforce the agreement on grounds unrelated to the substance of the reciprocal compensation provisions, even though the Virginia Commission previously had held that compensation for Internet-bound traffic was due under existing agreements.<sup>1</sup> Thus, Commission action is necessary to enforce Cox's rights under its agreements with Bell Atlantic and GTE.

Cox's proposed condition is as follows:

The applications are granted subject to the condition that, prior to consummation of the transfer of control, Bell Atlantic and GTE must pay all amounts due to other carriers as compensation for termination of Internet-bound traffic under any interconnection agreement entered into by Bell Atlantic or GTE prior to the Commission's February 26, 1999, *Declaratory Ruling and Notice of Proposed Rulemaking* in CC Docket Nos. 96-98 and 99-68.

This condition is narrowly tailored to address Cox's concerns without adopting new policies. Specifically, it covers only those interconnection agreements entered into before the Commission's *Reciprocal Compensation Order*, and therefore does not prejudice the outcome of the Commission's pending rulemaking. In addition, the condition is applicable to any agreement under which Bell Atlantic or GTE has failed to make payments for Internet-bound traffic, so that all CLECs that have carried such traffic will benefit. Consequently, Cox believes that inclusion of this condition in any order granting the transfer applications would fully address Bell Atlantic's and GTE's failure to make payments due under their interconnection agreements without making any policy judgments regarding future compensation arrangements for Internet-bound traffic.

Please inform me if you have any questions concerning this letter or Cox's proposed condition.

Sincerely,



J.G. Harrington  
Counsel for Cox Communications, Inc.

JGH/vll

Attachment

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<sup>1</sup> For your convenience, a copy of an earlier written *ex parte* filing regarding this issue, which describes Cox's efforts to enforce its agreement with GTE, is attached to this letter.

DOW, LOHNES & ALBERTSON, PLLC  
ATTORNEYS AT LAW

**STAMP & RETURN**

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February 15, 2000

**VIA HAND DELIVERY**

Magalie Roman Salas, Esq.  
Secretary  
Federal Communications Commission  
The Portals  
445 12th Street, S.W.  
Washington, D.C. 20554

**RECEIVED**  
**FEB 15 2000**  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: CC Docket No. 98-184 -- Transfer of Control of GTE Corporation  
EX PARTE Filing

Dear Ms. Salas:

Attached is a letter to the Chairman filed yesterday in connection with the above-referenced matter addressing the issue of payment of reciprocal compensation under GTE's existing interconnection agreements. A copy of the letter also was provided to each of the other Commissioners.

Pursuant to Section 1.1206(b) of the Commission's rules, an original and two copies of this letter and the attachments are being submitted to the Secretary's office for the above-captioned docket and a copy of this letter is being provided to each Commissioner. Should there be any questions regarding this filing, please contact the undersigned.

Respectfully submitted,



J.G. Harrington  
Counsel for Cox Communications, Inc.

JGH/vll

Attachment

cc (w/o attach.): Honorable William E. Kennard  
Commissioner Susan Ness  
Commissioner Michael Powell  
Commissioner Harold Furchtgott-Roth  
Commissioner Gloria Tristani



1225 Nineteenth Street, N.W., Suite 450 Washington, D.C. 20036 (202) 296-4933  
e-mail: alex.netchvolodoff@cox.com

**Alexander V. Netchvolodoff**  
Vice President of Public Policy

February 14, 2000

The Honorable William Kennard  
Chairman  
Federal Communications Commission  
445 - 12th Street, SW, Room 8B201  
Washington, DC 20554

Re: Transfer of Control of GTE Corporation  
CC Docket 98-184  
Written Ex Parte Communication

Dear Mr. Chairman:

I am writing to ask for your assistance in resolving an ongoing dispute between Cox Virginia Telecom, Inc. ("Cox") and GTE concerning GTE's refusal to compensate Cox for ISP traffic terminated on Cox's network.

Cox negotiated an interconnection agreement with GTE, which was signed by the parties in March 1997 and approved by the Virginia State Corporation Commission ("VASCC") in May 1997. Certain aspects of the agreement were arbitrated by the VASCC, but the reciprocal compensation provisions of the agreement were reached through voluntary negotiation.

At no time during the negotiations and prior to execution of the Agreement did GTE seek to exclude ISP traffic from the definition of local traffic. Neither did GTE bring this matter up as an issue for resolution during the VASCC's proceedings for arbitration. Since ISP traffic was commonplace at that time, it was hardly surprising that neither party saw a need to address ISP traffic explicitly in the agreement.

Under the terms of the interconnection agreement, GTE owes Cox reciprocal compensation over a period of 21 months in the accumulated amount of \$2,092,889.12. During the last 7 months, Cox owes GTE \$77,230.09 in reciprocal compensation. The net amount owed by GTE to Cox is \$2,015,659.03. Cox has repeatedly requested that GTE follow the compensation terms of the agreement, but GTE has made no payments for any traffic.

On March 18, 1999, Cox petitioned the VASCC for enforcement of its interconnection agreement with GTE for reciprocal compensation, including traffic terminated with ISPs.

On January 24, 2000, the VASCC declined jurisdiction because of the "possibility of conflicting results being reached by this Commission and the FCC." The VASCC further stated, "...the FCC's Reciprocal Compensation Order, to the extent it intends to confer regulatory jurisdiction, is of dubious validity." Accordingly, the VASCC dismissed Cox's petition without prejudice and encouraged Cox to seek a resolution of this dispute at the Federal Communications Commission.

The Virginia Commission's action is particularly significant because on July 1, 1999, the U.S. District Court for the Eastern District of Virginia entered an order dealing with a similar dispute between Bell Atlantic and MCI. The Court said the issue before it was "whether ISPs constitute reciprocal compensation under the terms of the parties' Agreement." The Court found that "...the Virginia Commission did make a determination regarding the agreement when it was approved. Thus, the Court finds that Section 252 applies. However, the Virginia Commission did not make a determination regarding the interpretation of the claims. This Court finds that the Telecommunications Act was designed to allow the state commission to make the first determination. Circumventing the state commission's initial review undermines the review process established by Congress in the Telecommunications Act. For those reasons, the Court holds that it lacks subject matter jurisdiction over this dispute until the Virginia Commission makes an initial determination."

Thus, Mr. Chairman, Cox finds itself in a veritable Catch 22. The U.S. District Court has found that agreements such as the one between Cox and GTE properly were entered into pursuant to Section 252 of the 1996 Act and that the state commission must make the first determination. Prior to the FCC's order on the jurisdictional nature of ISP-bound traffic, the VASCC had determined that carriers with agreements were entitled to be compensated for terminating this traffic. But now the VASCC declines jurisdiction, citing the FCC's order as substantially muddying the waters.

Accordingly, Cox asks the FCC to untangle this dispute by conditioning the merger of Bell Atlantic and GTE on GTE's payment of reciprocal compensation owed to Cox now or in the future during the pendency of their existing interconnection agreement. Cox has experienced actual costs for the transport and termination of GTE's traffic to ISPs. Cox is entitled to be compensated.

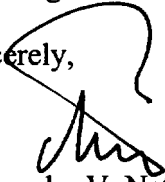
Mr. Chairman, this is a jurisdictional no man's land. It is caused in particular by the FCC's order, holding that ISP-bound traffic is substantially interstate. As a result, the VASCC has refused to act, and the courts will not force it to do so. The FCC, accordingly, would serve the cause of equities by imposing, as a condition of merger between GTE and Bell Atlantic, a



The Honorable William Kennard  
February 14, 2000  
Page 3

requirement that GTE pay the reciprocal compensation for Internet-bound traffic and all other traffic that is due under its existing agreement with Cox. Bell Atlantic has paid its ISP reciprocal compensation obligations under its interconnection agreement with Cox. GTE should do no less.

Sincerely,



Alexander V. Netchvolodoff

Enclosures: Cox Petition, Reply and Surreply to the VASCC  
VASCC Order  
Decision in Bell Atlantic v. MCI WorldCom, U.S. District Court, Eastern District  
of Virginia  
Analysis of Cox/GTE reciprocal compensation obligations

cc: The Honorable Harold Furchtgott-Roth  
The Honorable Michael Powell  
The Honorable Susan Ness  
The Honorable Gloria Tristani